

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

VAHAN JALADIAN,

No. CIV S-04-1304-LKK-CMK-P

Plaintiff,

vs.

ORDER

CRIBBS,

Defendant.

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Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Trial in this matter is currently set for June 10, 2008. Pursuant to this court's March 12, 2008 order (Doc. 68), plaintiff intends to call two inmates as witnesses during his trial, inmates McKellar and Loving. Defendant was ordered to provide to the court information regarding these inmates' current location. Defendant filed a notice with the court indicating the location of inmate Loving, but notifying the court that inmate McKellar has been paroled and does not currently have suitable housing and therefore his current location is unknown.

Plaintiff indicated in his pretrial statement that these witnesses are willing to testify. Accordingly, pursuant to a separate order, inmate Loving's personal appearance at trial

1 has been requested. However, defendant has indicated that witness McKellar is no longer
2 incarcerated and his current whereabouts is unknown. The court is unable to obtain the
3 attendance of witness McKellar if he is no longer incarcerated and his location is unknown. It is
4 plaintiff's responsibility to secure an unincarcerated witness' voluntary attendance at the trial. If
5 witness McKellar is no longer willing to testify voluntarily, plaintiff is responsible to prepare and
6 submit a subpoena to compel the witness' attendance. (See Doc. 48).

7 If plaintiff is able to locate witness McKellar, and if witness McKellar is present
8 at the trial, he will be allowed to testify. If witness McKellar is no longer willing to testify, and
9 plaintiff needs to subpoena the witness in order to obtain his attendance at trial, plaintiff is
10 required to discover his current location, prepare and submit to the United States Marshal a
11 subpoena for service by the Marshal, and tender an appropriate sum of money to the witness
12 through the United States Marshal. (See Doc. 48). The appropriate sum of money is the daily
13 witness fee of \$40.00, plus the witness' travel expenses. Witness fees and travel expenses are
14 required even though plaintiff was granted leave to proceed in forma pauperis, because no statute
15 authorizes the use of public funds for these expenses in civil cases.

16 The court will also request the defendant to notify the court if the location of
17 witness McKellar becomes known.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. If plaintiff wishes to compel the attendance of witness McKellar at trial, he
20 is required to:

- 21 a. provide sufficient information to the court regarding witness
22 McKellar's location;
- 23 b. prepare and submit to the United States Marshal a subpoena for
24 service by the Marshal no later than May 23, 2008; and
- 25 c. tender an appropriate sum of money to the witness through the
26 United States Marshal;

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1 2. The Clerk of the Court is directed to provide plaintiff with a copy of a
2 subpoena for use in a civil case;

3 3. The defendant shall notify the court if he becomes aware of the current
4 location of witness McKellar; and

5 4. If witness McKellar is voluntarily present at the trial, he will be allowed to
6 testify.

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8 DATED: March 26, 2008

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10 **CRAIG M. KELLISON**
11 UNITED STATES MAGISTRATE JUDGE
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